

EXHIBIT 40

From: Michael Dell'Angelo
To: Stacey Grigsby; "Kevin Rayhill"; Marcy Norwood Lynch; Suzanne Jaffe Nero; Ross McSweeney; Nicholas Widnell; Rory Skaggs; Brent Nakamura; William A. Isaacson; "Donald J. Campbell"; "J. Colby Williams"
Cc: "Joseph Saveri"; "Matthew Weiler"; Eric Cramer; Patrick Madden; Mark R. Suter; Richard A. Koffman; "Ben Brown"; "Daniel Silverman"; "Robert C. Maysey"; "Jerome Elwell (jelwell@warnerangle.com)"; "Don Springmeyer"; Abby Dennis
Subject: RE: Le et al. v. Zuffa, LLC
Date: Monday, May 22, 2017 7:35:14 PM
Attachments: [Michael Mersch Subpoena 5.22.17.pdf](#)

Stacey:

Thank you for agreeing to accept the attached subpoena on behalf of Mr. Mersch. We will respond separately to the remaining points in your letter.

Regards,

Michael

Michael Dell'Angelo

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From: Stacey Grigsby [mailto:SGrigsby@BSFLLP.com]
Sent: Thursday, May 18, 2017 10:28 PM
To: Michael Dell'Angelo <mdellangelo@bm.net>; 'Kevin Rayhill' <krayhill@saverilawfirm.com>; Marcy Norwood Lynch <mlynch@BSFLLP.com>; Suzanne Jaffe Nero <snero@BSFLLP.com>; Ross McSweeney <RMcSweeney@BSFLLP.com>; Nicholas Widnell <NWidnell@BSFLLP.com>; Rory Skaggs <RSkaggs@BSFLLP.com>; Brent Nakamura <bnakamura@BSFLLP.com>; William A. Isaacson <wisaacson@bsfllp.com>; 'Donald J. Campbell' <djc@campbellandwilliams.com>; 'J. Colby Williams' <jcw@campbellandwilliams.com>
Cc: 'Joseph Saveri' <jsaveri@saverilawfirm.com>; 'Matthew Weiler' <MWeiler@saverilawfirm.com>; Eric Cramer <ecramer@bm.net>; Patrick Madden <pmadden@bm.net>; Mark R. Suter <msuter@bm.net>; Richard A. Koffman <rkoffman@cohenmilstein.com>; 'Ben Brown' <BBrown@cohenmilstein.com>; 'Daniel Silverman' <DSilverman@cohenmilstein.com>; 'Robert C. Maysey' <rmaysey@warnerangle.com>; 'Jerome Elwell (jelwell@warnerangle.com)' <jelwell@warnerangle.com>; 'Don Springmeyer' <DSpringmeyer@wrslawyers.com>; Abby Dennis <adennis@BSFLLP.com>

Subject: RE: Le et al. v. Zuffa, LLC

Counsel,

Attached please find correspondence concerning the above-referenced matter.

Best,

Stacey

Stacey K. Grigsby

Partner

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From: Michael Dell'Angelo [<mailto:mdellangelo@bm.net>]

Sent: Monday, May 15, 2017 8:18 PM

To: Stacey Grigsby; 'Kevin Rayhill'; Marcy Norwood Lynch; Suzanne Jaffe Nero; Ross McSweeney; Nicholas Widnell; Rory Skaggs; Brent Nakamura; William Isaacson; 'Donald J. Campbell'; 'J. Colby Williams'

Cc: 'Joseph Saveri'; 'Matthew Weiler'; Eric Cramer; Patrick Madden; Mark R. Suter; Richard A. Koffman; 'Ben Brown'; 'Daniel Silverman'; 'Robert C. Maysey'; 'Jerome Elwell (jelwell@warnerangle.com)'; 'Don Springmeyer'; Abby Dennis

Subject: RE: Le et al. v. Zuffa, LLC

Stacey:

Thank you for the information below. Plaintiffs believe that serious issues need to be resolved regarding, at a minimum, the preservation, collection and production of Mersch's text messages.

No text messages were produced by Zuffa on behalf of Mersch as a custodian. However, Plaintiffs identified 137 text messages that Zuffa produced on behalf of custodians other than Mersch that were sent to/from Mersch. Therefore, there is no doubt that Mersch's device contained responsive ESI.

Of the 137 text messages, 37 post-date the filing of this litigation. Of those 37 text messages, 33 post-date January 21, 2015 and 4 fall between the date on which this litigation was filed and January 7, 2015; none are dated January 8-21, 2015. Therefore, even if Mersch "may have inadvertently deleted text messages from his personal cell phone between December 18, 2014 and January 12, 2015--when Zuffa legal contacted him about collecting his personal phone to respond to discovery," it is clear that he sent/received at least 33 responsive text messages after he was contacted by Zuffa Legal, and well after a litigation hold was issued, but which were not produced by Zuffa on behalf of Mersch as a custodian.

Please let us know if the text messages to/from Mersch that were produced by Zuffa on behalf of custodians other than Mersch were also collected from Mersch's phone on January 21,

2015. Based on your explanation below we understand that approximately 250 text messages were collected from Mersch's phone on January 21, 2015 and that the earliest of those text messages dates to January 12, 2015, one day after Zuffa Legal reportedly contacted Mersch about collecting his personal phone to respond to discovery. Of the approximately 250 text-messages that were collected, we understand that none were deemed responsive and none were produced. If any of the text messages were deemed responsive, please explain why they were not produced. If the text messages were not collected, please explain why.

We appreciate your explanation that Zuffa attempted to collect Mersch's phone for a second time, that he refused and claimed that he had no business texts on his phone dating between January 21 and the date that his employment was terminated. However, based on Zuffa's production, Mersch's representations regarding the contents of his phone, as recounted in your description below, do not appear to have been accurate. Therefore, Plaintiffs request that Zuffa's consent to Plaintiffs' request to serve a Rule 45 subpoena for relevant ESI contained on Mersch's phone. Absent Zuffa's consent, Plaintiffs will seek leave of Court.

Regards,

Michael

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From: Stacey Grigsby [<mailto:SGrigsby@BSFLLP.com>]

Sent: Friday, May 12, 2017 2:47 PM

To: Michael Dell'Angelo <mdellangelo@bm.net>; 'Kevin Rayhill' <krayhill@saverilawfirm.com>; Marcy Norwood Lynch <mlynch@BSFLLP.com>; Suzanne Jaffe Nero <snero@BSFLLP.com>; Ross McSweeney <RMcSweeney@BSFLLP.com>; Nicholas Widnell <NWidnell@BSFLLP.com>; Rory Skaggs <RSkaggs@BSFLLP.com>; Brent Nakamura <bnakamura@BSFLLP.com>; William A. Isaacson <wisaacson@bsfllp.com>; 'Donald J. Campbell' <djc@campbellandwilliams.com>; 'J. Colby Williams' <jcw@campbellandwilliams.com>

Cc: 'Joseph Saveri' <jsaveri@saverilawfirm.com>; 'Matthew Weiler' <MWeiler@saverilawfirm.com>; Eric Cramer <ecramer@bm.net>; Patrick Madden <pmadden@bm.net>; Mark R. Suter <msuter@bm.net>; Richard A. Koffman <rkoffman@cohenmilstein.com>; 'Ben Brown' <BBrown@cohenmilstein.com>; 'Daniel Silverman' <DSilverman@cohenmilstein.com>; 'Robert C. Maysey' <rmaysey@warnerangle.com>; 'Jerome Elwell' <jelwell@warnerangle.com>; 'Don Springmeyer' <DSpringmeyer@wrslawyers.com>; Abby Dennis

<adennis@BSFLLP.com>

Subject: RE: Le et al. v. Zuffa, LLC

Dear Michael,

Although I understand from your message below that you appear to have concerns about Mr. Mersch's text messages, you should understand that, based on our review of the available information, there is no possibility that we will obtain any additional text messages from Mr. Mersch's phone that can be produced to Plaintiffs. For that reason, your concerns about missing text messages from Mr. Mersch does not constitute a valid basis for indefinitely delaying Mr. Mersch's deposition.

As we have previously explained, Mr. Mersch's personal phone was collected January 21, 2015, but did not have a significant number of saved text messages on the phone because Mr. Mersch deleted text messages in the ordinary course of business. Mr. Mersch received a litigation-hold notice on December 18, 2014. While it is possible that he may have inadvertently deleted text messages from his personal cell phone between December 18, 2014 and January 12, 2015--when Zuffa legal contacted him about collecting his personal phone to respond to discovery --- an analysis of texts Mr. Mersch sent to other Zuffa employees demonstrates that these texts were of marginal relevance to Plaintiffs' RFPs. The first text message recovered by Zuffa Legal is dated January 13. Of the approximately 250 text-messages that were collected, none were deemed responsive to Plaintiffs' RFPs. Given the marginally responsive nature of the specific texts from Mr. Mersch that turn up in other employees' text-message files, this should not be surprising.

Approximately two months after Mr. Mersch's phone was collected, his employment at Zuffa was terminated. On March 23, 2015, an attempt was made to obtain Mr. Mersch's phone in order to download any relevant text messages. Mr. Mersch stated that he had no business texts on his phone between January 21 and the date his employment was terminated and refused to make his phone available. As Mr. Mersch was no longer an employee at that time and the phone was his personal phone, Zuffa believes that any text messages retained on it are no longer in Zuffa's control.

Best,
Stacey

Stacey K. Grigsby

Partner

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From: Michael Dell'Angelo [<mailto:mdellangelo@bm.net>]

Sent: Thursday, May 04, 2017 4:36 PM

To: Stacey Grigsby; 'Kevin Rayhill'; Marcy Norwood Lynch; Suzanne Jaffe Nero; Ross McSweeney; Nicholas Widnell; Rory Skaggs; Brent Nakamura; William Isaacson; 'Donald J. Campbell'; 'J. Colby Williams'

Cc: 'Joseph Saveri'; 'Matthew Weiler'; Eric Cramer; Patrick Madden; Mark R. Suter; Richard A. Koffman; 'Ben Brown'; 'Daniel Silverman'; 'Robert C. Maysey'; 'Jerome Elwell' (jelwell@warnerangle.com); 'Don Springmeyer'; Abby Dennis

Subject: RE: Le et al. v. Zuffa, LLC

Stacey:

As you know, Plaintiffs have several pending questions regarding the production of text messages from Mr. Mersch's iPhone 5s, as identified by Zuffa on December 21, 2015. Although Zuffa indicated that Mr. Mersch's phone was used "for business purposes," no text messages appear to have been produced from it despite the fact that messages to/from Mr. Mersch were produced by Zuffa's other custodians. Therefore, Plaintiffs are unable to confirm May 19 (or any other date) for Mr. Mersch until the failure to produce responsive text messages from his device are resolved.

Regards,

Michael

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From: Stacey Grigsby [<mailto:SGrigsby@BSFLLP.com>]

Sent: Thursday, May 4, 2017 2:23 PM

To: 'Kevin Rayhill' <krayhill@saverilawfirm.com>; Marcy Norwood Lynch <mlynch@BSFLLP.com>; Suzanne Jaffe Nero <snero@BSFLLP.com>; Ross McSweeney <RMcSweeney@BSFLLP.com>; Nicholas Widnell <NWidnell@BSFLLP.com>; Rory Skaggs <RSkaggs@BSFLLP.com>; Brent Nakamura <bnakamura@BSFLLP.com>; William A. Isaacson <wisaacson@bsfllp.com>; 'Donald J. Campbell' <djc@campbellandwilliams.com>; 'J. Colby Williams' <jcw@campbellandwilliams.com>

Cc: 'Joseph Saveri' <jsaveri@saverilawfirm.com>; 'Matthew Weiler' <MWeiler@saverilawfirm.com>; Eric Cramer <ecramer@bm.net>; Michael Dell'Angelo <mdellangelo@bm.net>; Patrick Madden <pmadden@bm.net>; Mark R. Suter <msuter@bm.net>; Richard A. Koffman <rkoffman@cohenmilstein.com>; 'Ben Brown' <BBrown@cohenmilstein.com>; 'Daniel Silverman' <DSilverman@cohenmilstein.com>; 'Robert C. Maysey' <rmaysey@warnerangle.com>; 'Jerome Elwell' (jelwell@warnerangle.com) <jelwell@warnerangle.com>; 'Don Springmeyer'

<DSpringmeyer@wrslawyers.com>; Abby Dennis <adennis@BSFLLP.com>

Subject: RE: Le et al. v. Zuffa, LLC

Counsel,

As a follow up to the email below, please let me know if Plaintiffs intend to proceed with Mr. Mersch's deposition on Friday, May 19th.

Separately, Lawrence Epstein is available to be deposed on Friday, May 26. Please let me know if that date works for Plaintiffs.

Best,
Stacey

Stacey K. Grigsby

Partner

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From: Stacey Grigsby

Sent: Sunday, April 23, 2017 12:33 PM

To: 'Kevin Rayhill'; Marcy Norwood Lynch; Suzanne Jaffe Nero; Ross McSweeney; Nicholas Widnell; Rory Skaggs; Brent Nakamura; William Isaacson; 'Donald J. Campbell'; 'J. Colby Williams'

Cc: 'Joseph Saveri'; 'Matthew Weiler'; 'Eric L. Cramer'; 'Michael Dell'Angelo'; 'Patrick Madden'; 'Mark R. Suter (msuter@bm.net)'; 'Richard Koffman'; 'Ben Brown'; 'Daniel Silverman'; 'Robert C. Maysey'; 'Jerome Elwell (jelwell@warnerangle.com)'; 'Don Springmeyer'; Abby Dennis

Subject: RE: Le et al. v. Zuffa, LLC

Counsel,

Both Mr. Dropick and Mr. Mersch are unavailable the week of April 24th. Mr. Dropick is available on May 4th. Mr. Mersch is available on Friday, May 19th. We are offering these May dates in recognition of the fact that the parties have been working for some time to confirm these depositions.

Zuffa's decision to extend this courtesy should not be taken nor understood to waive our objection to Plaintiffs' attempts to schedule numerous depositions after the close of fact discovery. As stated in our opposition to Plaintiffs' motion to reschedule, our attorneys and witnesses have already incurred costs as a result of Plaintiffs' decision to notice depositions for dates that Plaintiffs' counsel later told us they were unavailable. To that end, we request that Plaintiffs immediately confirm which of the following depositions, if any, Plaintiffs intend to proceed with:

Jeff Aronson, April 25

John Hertig, April 27
Amit Sripathi, April 27
Lawrence Epstein, April 28 (if Plaintiffs' emergency motion is denied)
Deutsche Bank 30(b)(6), April 28
WME 30(b)(6), April 28
The Raine Group, April 30

Please confirm that Plaintiffs will not proceed with the following depositions this week:

Kathryn Duva
Lou DiBella
Gary Ibarra
Leon Margueles

If Plaintiffs cannot indicate whether they are prepared to take these depositions, we request a meet on Monday, April 24.

Best,
Stacey

Stacey K. Grigsby

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From: Stacey Grigsby

Sent: Friday, April 21, 2017 3:38 PM

To: 'Kevin Rayhill'; Marcy Norwood Lynch; Suzanne Jaffe Nero; Ross McSweeney; Nicholas Widnell; Rory Skaggs; Brent Nakamura; William Isaacson; Donald J. Campbell; J. Colby Williams

Cc: Joseph Saveri; Matthew Weiler; Eric L. Cramer; Michael Dell'Angelo; Patrick Madden; Mark R. Suter (msuter@bm.net); Richard Koffman; Ben Brown; Daniel Silverman; Robert C. Maysey; Jerome Elwell (jelwell@warnerangle.com); Don Springmeyer; Abby Dennis

Subject: RE: Le et al. v. Zuffa, LLC

Hello Kevin,

April 26th will no longer work for Mr. Dropick. I will revert back shortly on another proposed date.

Best,
Stacey

Stacey K. Grigsby

Partner

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From: Kevin Rayhill [<mailto:krayhill@saverilawfirm.com>]

Sent: Friday, April 21, 2017 3:35 PM

To: Stacey Grigsby; Marcy Norwood Lynch; Suzanne Jaffe Nero; Ross McSweeney; Nicholas Widnell; Rory Skaggs; Brent Nakamura; William Isaacson; Donald J. Campbell; J. Colby Williams

Cc: Joseph Saveri; Matthew Weiler; Eric L. Cramer; Michael Dell'Angelo; Patrick Madden; Mark R. Suter (msuter@bm.net); Richard Koffman; Ben Brown; Daniel Silverman; Robert C. Maysey; Jerome Elwell (jelwell@warnerangle.com); Don Springmeyer; Abby Dennis

Subject: RE: Le et al. v. Zuffa, LLC

Stacey,

April 26 will work for Plaintiffs for the Dropick deposition. May 2 will work for Nakisa Bidarian.

Thanks.

Kevin

From: Stacey Grigsby [<mailto:SGrigsby@BSFLLP.com>]

Sent: Friday, April 14, 2017 2:05 PM

To: Kevin Rayhill; Marcy Norwood Lynch; Suzanne Jaffe Nero; Ross McSweeney; Nicholas Widnell; Rory Skaggs; Brent Nakamura; Bill Isaacson; Donald J. Campbell; J. Colby Williams

Cc: Joseph Saveri; Matthew Weiler; Eric L. Cramer; Michael Dell'Angelo; Patrick Madden; Mark R. Suter (msuter@bm.net); Richard Koffman; Ben Brown; Daniel Silverman; Robert C. Maysey; Jerome Elwell (jelwell@warnerangle.com); Don Springmeyer; Abby Dennis

Subject: RE: Le et al. v. Zuffa, LLC

Counsel,

Although we are willing to accept service for Nakisa Bidarian, we cannot yet confirm he will be available on April 28th. We have confirmed that Mr. Dropick is not available on April 28, but we can make him available on April 26th at Boies Schiller & Flexner's office in Las Vegas.

In addition, as I stated to you just yesterday and reiterated in my email earlier today, Zuffa does not consent to taking additional depositions out of time.

Warm regards,

Stacey

Stacey K. Grigsby

Partner

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From: Kevin Rayhill [<mailto:krayhill@saverilawfirm.com>]
Sent: Thursday, April 13, 2017 11:05 PM
To: Marcy Norwood Lynch; Stacey Grigsby; Suzanne Jaffe Nero; Ross McSweeney; Nicholas Widnell; Rory Skaggs; Brent Nakamura; William Isaacson; Donald J. Campbell; J. Colby Williams
Cc: Joseph Saveri; Matthew Weiler; Eric L. Cramer; Michael Dell'Angelo; Patrick Madden; Mark R. Suter (msuter@bm.net); Richard Koffman; Ben Brown; Daniel Silverman; Robert C. Maysey; Jerome Elwell (jelwell@warnerangle.com); Don Springmeyer
Subject: Le et al. v. Zuffa, LLC

Counsel,

Please see the attached deposition notice for Peter Dropick. Please also take notice that Plaintiffs are serving the attached deposition subpoenas and notices on third parties. Regarding Nakisa Bidarian, will Zuffa accept service on Mr. Bidarian's behalf?

Sincerely,

Kevin E. Rayhill
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JOSEPH SAVERI
LAW FIRM

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